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09/877,159	06/08/2001	David M. Baggett	09765-011002	1014
26161 7590 06/13/2011 FISH & RICHARDSON P.C. (BO) P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022				
EXAMINER MOONEYHAM, JANICE A				
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1 UNITED STATES PATENT AND TRADEMARK OFFICE  
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4 BEFORE THE BOARD OF PATENT APPEALS  
5 AND INTERFERENCES  
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7 *Ex parte* DAVID M. BAGGETT  
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10 Appeal 2007-002648  
11 Application 09/877,159  
12 Technology Center 3600  
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17 Before MURRIEL E. CRAWFORD, HUBERT C. LORIN,  
18 ANTON W. FETTING, JOSEPH A. FISCHETTI, and KEN B. BARRETT,  
19 *Administrative Patent Judges.*

20 FETTING, *Administrative Patent Judge.*

21 DECISION IN RESPONSE TO REMAND FROM THE U.S. COURT OF  
22 APPEALS FOR THE FEDERAL CIRCUIT  
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STATEMENT OF CASE

This is a decision responsive to the decision remanding this application back to the Board of Patent Appeals and Interferences by the U.S. Court of Appeals for the Federal Circuit. *In re Baggett*, 326 Fed. Appx. 569 (Fed. Cir. 2009). We have jurisdiction under 35 U.S.C. § 6(b).

The Board issued its original Decision on March 10, 2008, affirming the rejection of claims 1, 7-20, 22, and 28-41, and reversing the rejection of claims 2-6, 21, 23-27, 42, and 52-55. The Board also entered a new ground of rejection as to claims 2-6, 21, 23-27, 42, and 52-55. Decision 22-23.

The Appellant filed a Request for Rehearing on May 5, 2008. The Request provided some background in section I; specifically argued that the Board erred as to claim 1 in sections II through VI; specifically argued that the Board erred as to claim 2 in sections VII and VIII; and specifically argued that the Board erred as to claim 9 in section IX. Thus the only claims explicitly argued were claims 1, 2, and 9.

The Board granted the Request as to claim 9, but denied the Request as to the remaining claims. Decision on Request 8. The reason for granting the Request as to claim 9 was that the Board had misconstrued the term “memoization” as “memorization.” All the claims except for claim 9 were therefore under rejection following the Request Decision.

The Appellant filed an appeal to the Court of Appeals for the Federal Circuit on September 9, 2009. The Appellant argued for the patentability of all the claims and additionally argued that the Board erred in not granting the Request as to claims 20, 29, and 41 because those dependent claims also contained limitations regarding memoization similar to those in claim 9.

The Court issued its judgment on June 16, 2009, and a mandate issued September 21, 2009. The Court affirmed the Board as to the rejection of claims 1-8, 10-19, 21-28, 30-40, 42-46, and 52-55. But the Court then stated that “because the Board’s acknowledged error concerning the claim term ‘memoization’ also affects claims 20, 29, and 41, we *vacate* the Board’s rejections of those claims and *remand* for further proceedings consistent with this opinion.” *Baggett*, 326 Fed. Appx. at 570.

The appeal is now before the Board for decision consistent with the Court’s remand.

#### ISSUES ON REMAND

The sole issue is whether rejection as to claims 20, 29, and 41 should be reversed.

#### ANALYSIS

We agree with the Appellant that the art references applied against claims 20, 29, and 41 fail to describe memoization, as the panel similarly found as to claim 9, and for the same reasons as the panel found in the Request Decision.

#### CONCLUSION

The rejection as to claims 20, 29, and 41 is improper.

#### DECISION

To summarize, our decision is as follows:

- The rejections as to claims 1-8, 10-19, 21-28, 30-40, 42-46, and 52-55 remain AFFIRMED, as held by the U.S. Court of Appeals for the Federal Circuit.

- 1       • The rejection as to claims 9, 20, 29, and 41 is REVERSED.

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4                                   AFFIRMED-IN-PART

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